

Rodney Wiltshire, Jr.
Council President
Phone (518) 279-7134
Fax (518) 270-4639



Committees:
Finance, Chair

Office of the City Council
433 River St. Suite 5001
Troy, NY 12180

January 26, 2015

REPORT OF THE CITY COUNCIL REGARDING HEARINGS CONDUCTED IN 2014 CONCERNING DEMOLITIONS AND CODE ENFORCEMENT ACTIONS

Part I — History

In April of 2014, the Troy City Council began conducting a series of hearings concerning the oversight of both the Planning department and Building and Code in the Engineering department. These hearings were precipitated by three events that were significant enough to warrant a formal inquiry by the City Council.

The events in question were: the demolition and disposal activities occurring on and around the King Fuels brownfield site in South Troy; the August 2013 emergency demolition of 4-10 King Street and resulting public safety concerns; and the use of the Troy City Code department to place an eviction/evacuation notice on the doors of 51 3rd Street based on political discussions occurring there.

The City Council held six (6) hearings on the following dates with witnesses listed in the order of their appearance:

- April 29, 2014 with testimony from Charles Casale, Anthony Dawson, Russ Reeves, Barbara Tozzi
- May 8, 2014 with testimony from Flora Carr, Ryan Preston, Jack Healy, Michael Cristo
- May 28, 2014 with testimony from John Tirino, Dan Ditunno, Don Boyajian, Harry Tutunjian
- June 3, 2014 with testimony from Damon Dzembo, Jim Rivers, Barbara Tozzi, Mike Hayner, Tom Garrett
- June 17, 2014 with testimony from Ben Brucato, Dave Sheeran, Bill Dunne, Andrew Kreshik
- September 11, 2014 with testimony from Ian Silverman, Peter Ryan, and Lou Rosamilia

An appendix is also included with the speakers who were invited or compelled to testify for these hearings. See Appendix B (List of Witnesses).

While the Troy City Council makes no claim of criminal fault in any of these situations, the absence of any such claims shall not imply that criminal wrongdoing did not occur. It is noted that other qualified agencies are conducting external investigations into the legality of certain city processes and any criminal activity surrounding these events.

Further, the City Council sought to gain an understanding of the activities that ultimately led to the aforementioned events. The City Council performed this duty with the goal of encouraging the administration to develop policies and procedures to rectify mistakes and prevent these types of activities from occurring again.

This report will be divided into three sections, each covering one of the major topics detailed above, followed by a conclusion and appendix that contains additional information relevant to this report.

Part II — King Fuels Site

A. King Fuels site — History

The area in South Troy known as the King Fuels site has been mostly abandoned since the King Fuels processing facilities were shut down and acquired by National Grid over a decade ago. The site is divided into several parcels, one of which is owned and operated by the Troy Local Development Corporation (LDC). Much of this site is in need of remediation due to toxic materials which are contained in the ground. It is classified as a brownfield area. Current remediation efforts include the removal of abandoned buildings and a brownfield capping program under the purview of National Grid.

On November 22, 2013, then City Engineer Russ Reeves notified the City of Troy of his concerns over the LDC's management of the demolition of two buildings on this site. Mr. Reeves was especially concerned by not having been provided with guidance or engineering site plans concerning the demolitions, for review by himself or a qualified licensed engineer.

Although the Local Development Corporation owns and manages the site, this parcel is within the city limits and demolition permits must be issued and approved with an engineered plan through the Engineering office, which was run by Mr. Reeves.

The LDC and the King Fuels site project manager, Mr. Andrew Kreshik of the Troy Planning Department, under the supervision of Planning Commissioner Bill Dunne, hired the consulting firm of Ryan Preston to prepare an engineering report outlining the procedures for a controlled demolition on this site.

During testimony, Mr. Dunne and Mr. Kreshik both felt that their supervision and management of the site was adequate and that no extra oversight was necessary due to the fact that the LDC is the private owner and manager of the location where the demolition was occurring.

Mr. Preston's report and recommendations were then shared with the site contractor, PCS, which is headed by John Tirino. Mr. Tirino hired local demolition contractor Ditonno and Sons to perform the demolition of the Benzol building #5.

Ditonno and Sons performed the demolition of the former Benzol building in what has been characterized as an "uncontrolled demolition" during testimony by both engineers who viewed the demolition. Both Mr. Ditonno and Mr. Tirino confirmed that the engineering demolition plans were not completely shared with the demolition contractor, and would not have been followed by Mr. Ditonno even if they were shared. Mr. Ditonno cited his priority to bring the building down as quickly and cheaply as possible, and that the engineering plans, which were developed on behalf and at the expense of the LDC, were merely "suggestions" and he would not have followed them.

In addition to the demolition of the Benzol building, other storage facilities were demolished on the site. Some of these demolitions were performed by the contractor Charles "J.R." Casale. Based on testimony given, Mr. Casale was not in contact with the Engineering department or Mr. Reeves in particular. His point of contact was Mr. Kreshik, and all decision-making concerning processes and order for demolitions were run through him. Mr. Casale testified that he and his demolition activity was within forty (40) feet of the natural gas line E-20, but since he was operating on private property, there was no requirement to contact National Grid. He felt that their proximity to the natural gas line E-20 did not require or suggest communication with National Grid to advise them of the demolition activity.

On April 17, 2014, National Grid crews were alerted to the discovery of demolition processes which were occurring on the King Fuels site. They arrived on the scene to discover activity consisting of serious

construction and movement of demolition debris. This site is also a location to a high-pressure natural gas main E-20 which feeds the city of Troy and other surrounding communities with natural gas at a high pressure of 225 PSI (pounds per square inch).

Rubble and debris were found moved over the natural gas line, and many piles of rubble and debris were found in locations within one hundred yards from the natural gas line. Heavy machinery such as earth movers left tire treads which were also discovered leading up to the debris which was left over the natural gas line.

This natural gas main is located directly under concrete bunkers adjacent to the Hudson River and adjacent to another building which handles the recycling of electronic equipment. This natural gas line is between 50 and 60 years old, minimum. Other notable characteristics of this natural gas line is that it is a 12 inch diameter steel pipe and it is buried only 3 feet below grade.

At the time of this discovery, National Grid immediately contacted the Mr. Reeves and requested that the site be shut down immediately from all activity.

Mr. Jim Coffee, a representative from National Grid informed the city engineer that if this natural gas line were compromised, it would produce a massive explosion within the city limits of Troy and it would result in fatalities in the immediate vicinity, and an extensive loss of property in the South Troy area.

In written testimony, Mr. David Zielinski, National Grid's Director of NY Instrumentation and Regulation, further described the potential damage to the site and city as being "catastrophic". Mr. Zielinski further compared the resulting damage to that of military ordinance being fired on South Troy, including explosions, intense heat, and vaporization of nearby construction equipment, concrete buildings, and debris piles by leveling the immediate surroundings.

Firefighters would have no means of extinguishing the fires that were resulting due to the intense radiant heat that would be spreading hundreds of feet from the epicenter of the incident. Additionally, traffic patterns and daily life in the surrounding areas would be disrupted after such an incident.

Mr. Reeves immediately notified National Grid of his concerns. He then contacted Troy Mayor Lou Rosamilia and Deputy Mayor Peter Ryan to summarize the conversations that he had with National Grid. Specifically, he was concerned that the LDC and City of Troy staff were performing engineering activities and demolition tasks without direct consultation with the City of Troy's Engineering department. As such, his department would be unable to fulfill its responsibility to ensure life safety and personal property safety at the site.

Mr. Reeves subsequently tendered a letter of resignation on April 21st, 2014, citing his concerns over a perceived lack of life safety issues with the City of Troy's management, culminating with this incident, and how it would potentially affect his license and insurance in his position as the City Engineer.

B. King Fuels site — Findings

- Based on photographic and video evidence provided during the hearings and testimony, it is apparent that this site is essentially an uncontrolled site where a multitude of activities, including demolitions, heavy vehicle movement, and dumping are occurring.
- Based on testimony given, and subsequent investigations by the NYS Department of Labor and Federal Environmental Protection Agency, this site is suspected of being an illegal dumping ground

for demolition and construction debris from other locations throughout the community. These debris include asbestos laden materials.

- This site, in its uncontrolled and unsecured nature, has been compromised due to unwarranted traffic, transportation, trespass, and other non-sanctioned activity. Proper communication, notification, and cooperation was not coordinated between the various entities who had a need-to-know. Activities such as demolitions, which were being conducted on the site, were not properly communicated to all vested parties by the City staff of the Troy LDC. These vested parties were in particular: Mr. Russ Reeves and the City's Engineering Department, National Grid, and site occupant eLot.
- The demolition of the Benzol building appears to be an uncontrolled demolition, based on the video evidence presented at the hearings. This is further substantiated by the testimonies of Russ Reeves and Ryan Preston, both professional engineers who viewed and evaluated the aforementioned videos.
- Based on the testimony that was given, the recommendations and best practices of engineers and engineering firms were callously and flagrantly disregarded by the contractor, Ditonno and Sons, who was employed to conduct the demolition process.
- It is clear that both rubble and debris were moved in the days or weeks leading up to April 17, 2014 on to the area that contains the high-pressure natural gas main. This debris was placed there by heavy construction equipment with treads. Based on conflicting testimony given during the hearings, it was not possible to determine the origin of the rubble that was placed on top of the gas line.
- Mr. Kreshik suggested that his role and personal qualifications and experience granted him the ability to oversee engineering decision-making with regard to the demolition activity on the LDC site. It appears that there was insufficient concern for safety and a lack of professional engineering oversight by the LDC. Such oversight would take into account the potential hazards of demolition and the integrity of the high pressure main. Had the demolitions compromised the natural gas supply which feeds tens of thousands of residents, serious injuries as well as loss of the gas supply could have resulted.
- Based on testimony given by Mayor Rosamilia and Deputy Mayor Peter Ryan, they were not aware of demolition activities and general activities that were being conducted by Mr. Dunne and his LDC staff concerning the King Fuels site.

C. King Fuels site — Recommendations

- The City of Troy, as the authority having jurisdiction over building permits and demolition permits, must create and enforce a demolition approval policy. This policy must include the Engineering department to review and approve all demolition activities commencing on properties located within the city limits of Troy, regardless of ownership.
- The City of Troy, as the authority having jurisdiction should not grant demolition permits to general contractors or landowners unless they develop and provide a qualified engineering demolition and

site-safety plan. This plan must be submitted to the City for approval and must be subsequently shared with, and agreed upon, by contractors and subcontractors.

- All engineering, demolition, and site-safety plans should include and be shared with all stakeholders in the site including: owners, adjacent owners, occupants, tenants, and especially the management companies of utilities. Such utilities may be buried underground or overhead in close proximity to demolition and construction type activities. A written policy and procedure to acquire proof of communication to and acceptance by utility and other stakeholders should be required by the City as part of the demolition permit process.
- Demolition permits should only be granted when general contractors have indicated that they are hiring demolition subcontractors who meet the City's approval and are qualified in the type of demolition to be performed, as specified in the engineering documents. Furthermore, the general contractor and site owner/manager must take precautions to validate and supervise the demolition contractor's work. The general contractor and/or owner should receive a written commitment from the subcontractors as to the understanding and acceptance of an agreed-upon engineering plan for demolition activities.
- A policy should be instituted to provide appropriate consequences for any failures to abide by these plans by any party involved in the demolition activities. This policy should include criminal charges and punitive fines against any party including the landowner, the project manager, the contractor, and operator. Additionally, subcontractors who violate the policy or do not abide by the demolition engineering plans should be put on notice and negatively commented with the City of Troy's Building and Code department. This should result in a negative rating on the demolition contractors list, thus preventing them from commencing further demolitions in the city limits until demonstrated remediation and proper acceptance of the policies are adhered to.
- Once a demolition contractor has been listed with a negative rating, the only remediation method to be removed from this list is to have the Engineering or Code department witness a subsequent demolition where they demonstrate both appropriate knowledge and responsibility to adhere to a predetermined engineering plan. All costs associated with the City's supervision will be borne by the subcontractor for the time and expense associated with a City employee witnessing the re-approval demolition activity.
- The City of Troy should not grant demolition or construction permits on hazardous sites that are not secured. The Troy Local Development Corporation should take action to properly secure the site, such as the erection of a perimeter fence. Alternatively, the LDC may secure the site by means of video and surveillance or regular patrols to the site to ensure that unwarranted activity is not occurring there.
- Better oversight and communication between the Mayor's office and its direct reports must be established, especially in the instances where City of Troy employees are also acting in an official capacity on outside agencies such as the Troy LDC. The administration should insist on free flowing information between all parties with a need-to-know in the subject matter. Specifically, effective and thorough communication, information sharing, and collaboration must be fostered and encouraged between the members of the Planning department and the Engineering and Code

department concerning matters of this nature. This must be instilled from the top down, starting with the Mayor's office.

- The City of Troy should appreciate that the situation was averted only through good fortune and potentially good timing. However, a much larger catastrophe could have occurred. The Mayor's office should take serious and swift action to rectify this immediately by following the outlined security solutions and process improvements, or the site should be shut down completely.

Part III — King Street

A. King Street — History

On Monday, August 5, 2013, the building at 4-10 King Street was demolished, the result of an emergency declaration by Fire Chief Thomas Garrett. Several citizens, including some members of the Troy City Council, took issue with the Fire Chief's judgment as it pertains to his evaluation of the building's structure, as well as how it pertains to the conduct of the demolition itself.

As a result of the questions raised regarding the circumstances surrounding the demolition of 4-10 King Street, the City Council utilized its powers of investigation to gather all of the facts, to construct a timeline of events before, during, and after the demolition, to evaluate the information, to draw logical and educated conclusions, and to offer reasonable recommendations to avoid similar missteps in the future.

The building at 4-10 King Street was purchased by local attorney Donald Boyajian in December, 2009. Mr. Boyajian already owned 2 King Street, having inherited it from his uncle. That building, which was previously known as American Food Market, would eventually become a restaurant – Troy Bombers Burrito Bar. He later purchased 12-18 King Street, with plans to eventually redevelop that entire strip of King Street.

The structure at 4-10 King Street sat vacant and in disrepair for the next three and a half years following its purchase. The City issued several code citations to Mr. Boyajian in the years prior to the demolition. The citations ordered him to either repair the structure, or to demolish it. The building was not properly secured, and mischievous persons would break into the building regularly. These breakins would often require police involvement.

In 2012, the Troy Fire Department began training personnel in a new program that would assess over 500 vacant buildings in the city and place red "X" placards on buildings that are deemed too dangerous to be entered by firefighters. The building inspections began in the spring of 2013.

On Friday, August 2, 2013, Chief Garrett ordered Chief McMahon to begin placarding the worst buildings, which in his opinion were 4-10 King Street, as well as 2139 and 2141 5th Avenue. The placarding would actually begin on the following Monday, with around forty (40) buildings being targeted for the placard. On Sunday, August 4, 2013, City Engineer Russ Reeves began a one-week vacation. As such, he would not be in the area for the start of placarding or any other actions being taken with respect to these buildings.

On Monday, August 5, 2013, the aforementioned buildings received the red "X" placard. On that same day, Chief Garrett declared 4-10 King Street an emergency demolition, and invoked Incident Command over the demolition process. Several witnesses testified to seeing green "Action Team" barricades at the demolition site around 6:30am on Monday morning, prior to the actual emergency declaration and demolition. Supervisor of Streets Mike Hayner was unable to indicate exactly why the barricades were there, but conjectured that they had been left in that area from an earlier event. No documentation of barricade placement was available from the Department of Public Works.

The buildings at 2139 and 2141 5th Avenue were adjacent properties located at the rear of the parking lot area behind 4-10 King Street. These properties were previously listed on the City's surplus property disposal list for sale to the public. In various testimony given, these 5th Avenue properties were valuable for any development on this site in both their proximity to 4-10 King Street and their access to 5th Avenue from the back of the parking lot.

Both buildings burned in February of 2014, were suspected of arson by the Fire Chief, and were subsequently demolished. Flora Carr of Bethel Baptist Church testified that, after the fires and subsequent demolition, her church attempted to purchase these properties for use as additional parking. Both parcels were subsequently removed from the surplus property list on February 12, 2014 by the Mayor's office. On March 7th, 2014, the administration communicated with Bethel Baptist Church erroneously, stating that their bid offer was not accepted by the City Council.

B. King Street — Findings

The Council proffers the following opinions and findings as a result of its investigation into the demolition of 4-10 King Street:

- Based on testimony given, Mr. Boyajian flagrantly disregarded and ignored repeated directives in citations by the City to either repair or demolish the properties.
- Mr. Boyajian's refusal to comply with these instructions from Code, while saving him the expense of repair, remediation, and permitting, allowed the building to fall into further disrepair.
- Mr. Boyajian failed to properly secure the premises at 4-10 King Street, as the Fire Chief indicated that the building was not properly boarded up. In addition, the City failed to enforce this requirement appropriately.
- Mr. Boyajian had a desire to demolish 4-10 King Street and other attached properties as part of his plans to commercially develop that area years prior to the actual emergency demolition.
- Mr. Boyajian made multiple attempts with the previous administration and City Engineer Russ Reeves to have the building razed through an emergency declaration, but was told to follow the standard procedure for demolition each time.
- Mr. Boyajian, as well as multiple city officials, was aware that the building contained asbestos.
- Mr. Boyajian contacted multiple contractors to receive quotes for demolition and asbestos abatement.
- Mr. Boyajian benefited financially by avoiding the expense associated with asbestos abatement. Further savings were realized by avoiding the time-consuming process of obtaining permits and planning approval for a proper and lawful demolition.
- A proper and orderly demolition is, in the opinion of this Council, a safer and smarter way to remove a building, rather than an emergency demolition, which lacks the planning and review of a standard demolition. The apparent diminished level of public safety during an emergency demolition directly contradicts the Fire Chief's claim that public safety was the primary reason for this demolition.
- The building at 4-10 King Street was not in imminent danger of collapse nor an immediate threat to public safety. The standard demolition process, including asbestos abatement, could and should have been utilized, rather than an emergency declaration.

- The placement of a red “X” placard on a building is not necessarily a precursor to demolition. It simply indicates that firefighters shall not enter the building to fight a fire.
- The timing of the demolition remains deeply suspicious, as it is highly improbable that 4-10 King Street became a public safety hazard the day after the City Engineer went on vacation.
- Based on testimony, City of Troy “Action Team” barricades were seen on King Street early in the morning of August 5, 2013 in an area that indicated they had been dropped off awaiting placement for use.
- The lack of availability of records to detail the activities of Department of Public Works employees is troublesome, especially in an era of mobile applications and GPS tracking.
- The observation of barricades on site prior to the actual emergency declaration raises the specter of a pre-planned demolition, rather than a sudden emergency.
- The demolition of 4-10 King Street produced a debris cloud that was at least partially contaminated with asbestos.
- Based on testimony given, asbestos fibers can remain airborne for days after being disturbed.
- Public safety was put at risk when the public was allowed to congregate in the vicinity of the demolition, in the absence of any air quality monitoring. It is highly likely that members of the public inhaled asbestos-contaminated air.
- Public safety was additionally put at risk when patrons at the adjacent Bombers restaurant were not evacuated prior to demolition.
- The contractor utilized for demolition was unaware of whom he should maintain contact with during the demolition process. Additionally, the contractor made assumptions regarding the City’s role in providing public safety support (curious bystanders, patrons, pedestrians, nearby businesses), as he had no official contact person within the City.
- The demolition contractor had concerns for the safety of his machine operator should an unforeseen collapse of the adjacent wall of Bomber’s occur during the demolition activities.
- Chief Garrett chose not to evacuate Bomber’s during the demolition, stating a concern that closing down the restaurant during the demolition would negatively impact the business financially for that day.
- The Fire Chief did not consult with an engineer prior to ordering this demolition, nor did the Fire Chief consult with any city officials regarding a possible evacuation of Bombers.
- The Fire Chief lacks the credentials of a certified professional engineer, and is therefore not as well-equipped to make evaluations on the structural integrity of a building as the City Engineer.
- The Fire Chief ultimately assumes responsibility for all aspects of Incident Command in the absence of the City Engineer.

- Based on the advice of Corporation Counsel Ian Silverman, Mayor Rosamilia halted the structural assessment of the adjacent wall of Bombers subsequent to the demolition.
- In the absence of the City Engineer, the responsibility to maintain proper and adequate public safety during Incident Command rests with the Fire Chief, and any failure to uphold these public safety standards should result in appropriate discipline.
- The Mayor failed to hold the Fire Chief accountable for the breaches in public safety during the demolition of 4-10 King Street under Incident Command.
- The lack of acknowledgment from the City's administration is troublesome and disappointing.
- Prior to and during the hearings, the Council suggested that the administration evaluate current demolition practices and make the necessary changes to laws and procedures to avoid such lapses in public safety in the future. To date, this has not occurred.

C. King Street — Recommendations

The Council proffers the following recommendations as a result of its investigation into the demolition of 4-10 King Street:

- **Evacuation of areas surrounding a demolition site:** One goal that was shared by all participants at our hearings was ensuring the safety of the public at all times. The simplest way to achieve this goal is to keep the public away from any site of demolition. At no time should public safety be jeopardized for the sake of convenience, expedience, or revenue. If there is a question as to whether or not the public should be evacuated from a nearby residence or business, we suggest that the City always err on the side of caution by evacuating the premises.
- **Proper and thorough documentation:** All activities surrounding DPW processes must be logged. Reference the lack of DPW logs that led to Mike Hayner's inability to testify as to the reason why barricades were on site.
- **Emergency demolition as a last resort:** The authority to demolish a building with a simple declaration, without following the standard process of application, evaluation, and approval, is a power that must be used sparingly and responsibly. Unless a building is an immediate threat of collapse and could cause harm to public safety or adjacent property, the emergency declaration should not be used. Emergency declarations cannot, at any time, be used to short-circuit the proper and lawful process that has been established for removing a building.
- **Improving the demolition process:** During the hearings on the King Street demolition, the Council suggested that the administration revisit the current procedures used for demolition, especially as they relate to emergency declarations. To the best of our knowledge, no work has been done in this area. Therefore, we again recommend that the City review its own demolition procedures, especially given recent errors in judgment and process. The City should consult with legal, environmental, and engineering experts to improve all policies related to demolition, with an emphasis on developing a rational and rigorous process for emergency demolition.

- **Accountability for actions:** Employees of the City, independent of their level, stature, or tenure, must be held accountable for their actions. It is up to the Mayor's Office to enforce accountability and to administer discipline when necessary. If the Mayor's Office is unable or unwilling to perform this oversight action, then we recommend utilizing a currently established body, such as the City Council or the Ethics Commission, or establishing a new body, such as a Workforce Oversight Board, to implement the necessary accountability.
- **Evaluation of adjacent structures:** Adjacent structures attached to buildings that are demolished by the City or pursuant to City order must be evaluated for structural integrity before allowing reentry and reoccupancy.
- **Timeframe of emergency declarations:** Upon extinguishment of any fire, the Fire Chief shall contemporaneously evaluate the structure for declaration of further actions regarding demolition. The decision to declare an emergency and invoke Incident Command should happen as quickly as possible following such a structural fire, but shall never take more than twenty-four (24) hours. After that point, only a planned demolition shall be utilized to remove a building, unless a licensed professional engineer can document a localized structural failure that warrants an emergency declaration.
- **Emergency declaration by consent:** A minimum of two city employees, at least one being a qualified licensed professional engineer, should be required for all decisions regarding both scheduled demolitions and emergency demolitions. Additionally, for emergency demolitions, the Mayor should be required to approve such decisions.

Part IV — 51 3rd Street

A. 51 3rd Street — History

An incident that occurred at Kokopellis Club at 124 4th Street in Troy received widespread media coverage. Public concerns developed around opposing views about the incident, management of 124 4th Street, and the police response.

Troy Police were called to Kokopellis Club at 124 4th Street near Congress Street by the staff because of unruly patrons fighting with the security staff on January 25, 2014, at approximately 1:45am. A party had been “shut down” by the owner due to patron misbehavior. In the course of assisting the closing and crowd control, physical altercations occurred between the police and patrons, and the use of force by police was applied to one patron via baton.

Unruliness and physical confrontation continued inside and outside of 124 4th Street, with actions including the activation of a fire extinguisher, a garbage receptacle being thrown through the rear window of a police vehicle, injuries sustained to six police officers and several patrons, and the eventual arrests of five persons for disorderly conduct, civil disobedience and/or resisting arrest. Of note, the Troy Police Department had concerns about this establishment and the planned event. Preparations included moving the Mobile Command Center to a nearby location.

After the incident, the owner released video files from sixteen security cameras to the media, the Troy PD, and City Council President Wiltshire. The local television media broadcast the altercation inside 124 4th Street and the use of force on weekend news shows. On Monday, the Mayor issued a message to the media supporting the necessary use of force. Subsequently, a news conference, including presentation of video of mayhem outside of Kokopellis, was conducted by the administration.

Certain community members had expressed concern about police use of force prior to the Kokopellis incident and had opposing views. The African American Pastoral Alliance submitted a statement of concerns regarding the Troy police to the Department of Justice citing this incident and several other cases. Reverend Willie Bacote of the Missing Link Church called for a “March Against Police Brutality” on February 4, 2014, to conclude at the previously scheduled Public Safety Committee meeting of the City Council. A group of citizens intended to gather at 51 3rd Street to plan the march.

51 3rd Street is a four-story building in the downtown area of Troy. It is owned by Igor Vamos, an RPI Professor, who is an internationally recognized political satirist and filmmaker, professionally known as Mike Bonanno of the “Yes Men”. His tenants are artists and academics. The ground floor has a large meeting room that has been used for varied artistic events and discussions. These often reflect collective interests and concerns about the environment, social justice, and empowerment. One tenant, Ben Brucato, provided support for Reverend Bacote in expressing concerns about use of force by police. As a PhD candidate at Rensselaer Polytechnic Institute, his area of research is community-police relations.

A notice forbidding continued use of 51 3rd Street under penalty of fine or imprisonment was posted on the entry door on Friday, January 31, 2014 at approximately 11:00am by the Troy Building Code Department. Mr. Ben Brucato, a tenant at 51 3rd Street, contacted Robert Doherty, District 4 Councilman, at approximately 4:00pm, lodging a complaint that this posting was a retaliatory act by the City because he is supporting the upcoming march.

Mr. Doherty immediately made a telephone request to Ms. Kathleen Cassidy, Administrative Assistant in the Mayor’s office, that the posting be removed to avoid “the appearance of retaliation” and a “violation of citizen rights that would embarrass the Mayor”. She sought help from Ian Silverman, Corporation Counsel, who gave the direction not to honor the request. Mr. Doherty then sought assistance from Mr. Dunne, the

Troy Planning Commissioner and was told, “If the Building Code Department has a concern about not having a C of O [Certificate of Occupancy] or safety concern, the eviction notice would remain.”

B. 51 3rd Street — Findings

- Early in the morning of Friday, January 31, 2014, Mr. Dunne read on “Troy Spin”, a political blog of Jim Franco, that persons planning the “March Against Police Brutality” were using 51 3rd Street for planning meetings. While at work that morning and in his capacity as Planning Commissioner, Mr. Dunne discussed 51 3rd Street with Dave Sheeran, Code Supervisor. Mr. Sheeran dispatched Matt McGrath, a Code Inspector, who posted the eviction/evacuation notice on the door at 11:00am.
- It is common for Troy buildings not to have a Certificate of Occupancy. A Certificate of Occupancy is obtained if there is a reason to acquire it, such as a sale or building project permit request. 51 3rd Street has been under the ownership of Mr. Vamos for thirteen years, during which he was never informed by the City of the need for a Certificate of Occupancy.
- Based on Mr. Sheeran’s testimony, it is customary to perform an onsite inspection of a building for Certificate of Occupancy violations prior to citing an owner for failure to possess one. Multiple examples of other situations where onsite inspections were performed by Code officers were given during testimony.
- No onsite inspection from Code occurred prior to the action. No notice or communication other than the eviction/evacuation notice posting was provided to the owner before the action. An eviction/evacuation notice is the only manner of communication from Code to owners to request that a Certificate of Occupancy be obtained.
- The eviction/evacuation notice prohibited any entry or use of the entire building under penalty of fine or imprisonment. This was an error, as the only Code Department concern was the first floor meeting room.
- The owner of the building had no involvement or knowledge of his tenants’ actions or interests in police functions. Several months after the posting was in place, Commissioner Dunne suggested to both the owner and Troy Architectural Program (TAP), a local architectural planning and design group, that they collaborate on a submission of a building plan to gain a Certificate of Occupancy. This was done, accepted by Planning, and the matter was resolved.
- The eviction/evacuation notice placed on 51 3rd Street was the result of efforts to retaliate against and suppress persons exercising their right to peaceably assemble. This retaliation was spearheaded by Commissioner Dunne and abetted by other administration officials.
- The eviction/evacuation notice for the premises was wrong, as it targeted the entire building. The only code concern was the first floor meeting space. It remained posted for at least three months, although the Code Supervisor made it clear to Deputy Mayor Peter Ryan that it could be removed, as the purpose of posting was achieved.
- As a result of the eviction/evacuation, Mr. Igor Vamos, owner of 51 3rd Street, lost two tenants and was unable to rent apartments for several months. This caused real financial harm to Mr. Vamos.

- Mr. Ben Brucato is a doctoral student at RPI in Science & Technology Studies and a tenant at 51 3rd Street. His area of interest is critical criminology and technology studies. Mr. Brucato participated in discussion of police/community relations that led to him to support a “March Against Police Brutality” on February 4, 2014. He was labeled “public enemy number one” on local talk radio. Mr. Brucato said he received threats from a person he did not know while pumping gas. His family left Troy for five weeks fearing for their safety.

D. 51 3rd Street — Recommendations

- Application of government regulatory and procedural powers needs to be carefully managed to avoid discriminatory actions or abuse through exploitation by persons with dubious, retaliatory, or unknown interests. Special treatment or responses to special interests or alignments are likely to violate legal requirements of use of public resources and citizen rights.
- Our enforcement and regulatory processes must be objective and based on verified information discovered in routine operational fashion or the result of special reviews or actions authorized by supervisory personnel. If not from routine scheduled inspections or activities, actions should originate from identified, verified, and reliable sources. This would include verification of anonymous reporting. This is essential to minimize City liability or inappropriate use of City resources.
- The departments and functions of Troy City Government must be insulated from directions and assignments arbitrarily originating from personal, political, or other any purpose other than the well-defined services of City administration and function. Ongoing monitoring of work activities in supervision and oversight is required at all levels, but is especially important for managerial and higher level personnel. Strict adherence to organizational management structures and reporting lines will assist in preventing arbitrary or non-authorized directions to subordinate level staff by higher level persons other than a direct supervisor.
- Regulatory or administrative requests to citizens could and should be communicated in a routine manner by mail. Evictions and evacuation notices should only be used in support of legal processes addressing verified and known safety concerns. Developing standard, less startling posting notices, in addition to eviction notices, would be welcomed by the Code Department.
- Customer service training at orientation and ongoing training of City personnel to assure professional service standards are evenly applied would be beneficial. Supervisory training on legal requirements to reduce liability could target prevention of discriminatory practices, selective enforcement, and unequal treatment issues. A clear understanding of the requirement to be tolerant, respect diversity, and serve the public with equanimity needs to be incorporated into the culture and standards of the workforce.
- We recommend utilizing the available database in CityView to readily determine all existing buildings that do not have a Certificate of Occupancy. A work plan procedure could be developed to inform owners of this requirement and to initiate follow-up actions in monitoring compliance. The goal should be to use technology to be proactive in determining whether a building has a Certificate of Occupancy or not.

Part V — Conclusion

Overall, the hearings proved to be a useful tool to gain insight into the activities, direction, policies, and procedures of the administrative branch of government for which the Mayor's office is responsible. It appears that many department heads take it upon themselves to stretch the authorities and powers that they feel the City Charter and/or City Code has provided to them. While this might allow them to do their jobs in an easy and more streamlined manner, it lacks proper checks and balances, sometimes even avoiding a simple notification to superiors.

The City Council, in its effort to conduct these hearings, was often thwarted when following proper procedure to provide notice and plan the meeting logistics. This was accomplished through scheduling/delay tactics, a mayoral veto on a meeting resolution, and subpoena requirements. This of course may lead to the reasonable inference that information was being deliberately hidden or manufactured in order to sell a story or bolster a certain testimony.

Ultimately, due to the tremendous amount of inconsistencies given within the various testimonies, it was impossible for the City Council to identify a clear path to responsibility of any particular individual or set of individuals. Moreover, we uncovered a systemic and integral set of failures and patterns that have led to the three events which were the topics of the hearings. The first step toward improving processes and avoiding recurrences of these breaches in public safety is the admission and acknowledgment of mistakes.

At the time of this writing, there have not been any substantive policy changes or official decrees from the administration concerning the above situations and root causes. The phrase, "No harm, no foul", should not be used as an excuse for choosing to ignore failures or gaps in processes that could have led to catastrophic outcomes. Normalizing exceptions is not a process improvement method, and will most likely result in negative if not tragic consequences.

It is our sincere hope that through revisions to internal policies, the City Charter, and City Code, improvements will be made to prevent these types of situations from occurring in the future. The citizens, taxpayers, business owners, and visitors to the City Of Troy deserve to enjoy a safe, fair, and just community. It is paramount that considerations for all members of the community are taken as the number one priority over the few who may have access or connections to City Hall.

Part VI — Appendix

A. Online Resources

Additional information, including hearing transcripts, audio, and presentation materials can be found at the following URL:

http://troycitycouncil.com/docs/demo_hearings/

B. List of Witnesses

The table below contains the full list of witnesses who provided sworn testimony during the series of hearings. The “Title” column contains the individual’s title at the time of the hearings, with an underlined title signifying a past or present employee of the City of Troy.

Name	Title or Position	Date of Testimony	Relevant Testimony
Charles Casale	Demolition contractor	4/29/2014	King Fuels
Tony Dawson	eLot representative	4/29/2014	King Fuels
Russ Reeves	<u>Former City Engineer</u>	4/29/2014	King Fuels, King Street
Barb Tozzi	<u>Assistant to City Engineer</u>	4/29/2014 6/3/2014	King Fuels, King Street
Flora Carr	Bethel Baptist Church	5/8/2014	King Street
Ryan Preston	Consulting Engineer for TLDC	5/8/2014	King Fuels
Jack Healy	Consulting Engineer for City	5/8/2014	King Street
Michael Cristo	Demolition contractor	5/8/2014	King Street
John Tirino	PCS project manager	5/28/2014	King Fuels
Dan Ditunno	Demolition contractor	5/28/2014	King Fuels
Don Boyajian	Owner of King Street properties	5/28/2014	King Street
Harry Tutunjian	<u>Former Mayor of Troy</u>	5/28/2014	King Street
Damon Dzembo	Owner of Troy Bombers	6/3/2014	King Street
Jim Rivers	<u>Civil Engineer (retired)</u>	6/3/2014	King Street
Mike Hayner	<u>Supervisor of Streets</u>	6/3/2014	King Street
Tom Garrett	<u>Fire Chief</u>	6/3/2014	King Street
Ben Brucato	Resident of 51 3rd Street	6/17/2014	51 3rd Street
Dave Sheeran	<u>Code Enforcement Officer</u>	6/17/2014	51 3rd Street
Bill Dunne	<u>Planning Commissioner and TLDC chairman</u>	6/17/2014	King Fuels, King Street, 51 3rd Street

Andrew Kreshik	<u>Assistant Planner and TLDC project manager</u>	6/17/2014	King Fuels
Ian Silverman	<u>Corporation Counsel</u>	9/11/2014	King Fuels, King Street, 51 3rd Street
Peter Ryan	<u>Deputy Mayor</u>	9/11/2014	King Fuels, King Street, 51 3rd Street
Lou Rosamilia	<u>Mayor</u>	9/11/2014	King Fuels, King Street, 51 3rd Street

We, the undersigned agree with the specified contents of this report,

Rodney G. Wiltshire Jr.
President – Troy City Council

Kenneth Zalewski
President Pro Tempore – Troy City Council

Anastasia Robertson
Troy City Council – District 2

Dean Bodnar
Troy City Council – District 3

Robert Doherty
Troy City Council – District 4